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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/780,102  | 02/17/2004  | Arnd Kessler         | H 5335 PCT/US       | 9903             |
| 423   | 7590        | 08/18/2005           | EXAMINER            |                  |
| HENKEL CORPORATION<br>THE TRIAD, SUITE 200<br>2200 RENAISSANCE BLVD.<br>GULPH MILLS, PA 19406 |             |                      | MRUK, BRIAN P       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 1751                |                  |

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/780,102

Applicant(s)

KESSLER ET AL.

Examiner

Brian P. Mruk

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-97 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-97 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1.. This Office action is in response to Applicant's amendment filed May 9, 2005. Applicant has amended claims 1, 4, 18, 69, and 97. Currently, claims 1-97 remain pending in the application.

2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 20041204.

3. The objection of claims 4, 18 and 69 is withdrawn in view of applicant's amendments and remarks.

4. The rejection of claims 1-21, 25-27, 35, 43-54, 60-75 and 97 under 35 U.S.C. 102(b) as being anticipated by Drapier et al, U.S. Patent No. 4,752,409, is withdrawn in view of applicant's amendments and remarks.

5. The rejection of claims 1-14, 19-27, 35-38, 40, 43-49, 60-76 and 97 under 35 U.S.C. 102(b) as being anticipated by Cilley, EP 383,482, is withdrawn in view of applicant's amendments and remarks.

6. The rejection of claims 1-27, 35-39, 43-54, 60-76 and 97 under 35 U.S.C. 103(a) as being unpatentable over Ahmed, U.S. Patent No. 5,229,027, is withdrawn in view of applicant's amendments and remarks.

7. The provisional rejection of claims 1-97 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-75 of copending Application No. 10/752,947 is maintained for the reasons of record.

8. The provisional rejection of claims 1-97 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61 of copending Application No. 10/753,130 is maintained for the reasons of record.

### ***Response to Arguments***

9. Applicant's arguments filed May 9, 2005 have been fully considered but they are not persuasive.

Applicant argues that copending application Serial Nos. 10/752,947 and 10/753,130 do not exclude certain species of zinc salts or acids, as required by the instant claims. However, the examiner asserts that double patenting still exists, since copending application Serial Nos. 10/752,947 and 10/753,130 claim that any magnesium salt can be included (see claim 59 of '947 and claim 44 of '130), per the requirements of instant claims 1 and 97.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

*BPM*

Brian Mruk  
August 16, 2005

*Brian P. Mruk*  
Brian P. Mruk  
Primary Examiner  
Tech Center 1700